

# **BACKGROUND PAPER FOR HEARING JANUARY 6, 2004**

## **BUREAU OF AUTOMOTIVE REPAIR (BAR)**

### **IDENTIFIED ISSUES, QUESTIONS FOR THE BAR, AND BACKGROUND CONCERNING ISSUES**

**FIRST SUNSET REVIEW:** This is the first sunset review by the Joint Legislative Sunset Review Committee (JLSRC) of the Bureau of Automotive Repair.

Prior to 1972, there was no specific state regulation of the automotive repair industry. In 1971, after two years of legislative debate in response to consumer and industry concerns about fraud and incompetence in the auto repair business, California enacted the Automotive Repair Act (Act) through passage of SB 51 (Beilenson, Chapter 1578). California was the first state in the nation to implement a comprehensive program for the regulation of the automotive repair industry, and enactment of the Act was supported by consumers and many organizations in the industry. The primary purpose of the Act was to protect consumers from unethical and illegal behavior by the automotive repair industry, and achieve consumer confidence in the California auto repair industry.

SB 51 mandated a statewide automotive repair consumer protection program, creating the Bureau of Automotive Repair (BAR or Bureau) as part of the Department of Consumer Affairs (DCA) in 1972. The BAR is administered by a Bureau Chief who is appointed by the Governor and confirmed by the State Senate. The Bureau Chief serves at the pleasure of the Governor and under the direction and supervision of the Director of the DCA. The Act requires automotive repair dealers (ARDs) to be registered with the BAR, and defines an ARD as a person or entity who, for compensation, engages in the business of repairing or diagnosing malfunctions of motor vehicles. The Act requires ARDs to provide written estimates, obtain written customer authorization to perform repairs, provide customers with itemized invoices that detail both the parts and labor performed, and provide customers with the parts that have been replaced on their vehicles upon request.

Except for ARDs who perform specified inspections of vehicular lighting and brake systems required by the Vehicle Code, or those who perform vehicle emission inspections and repairs (see below), there are no prerequisite educational, experience, training, or examination requirements. Automotive repair technicians ("mechanics"), except for those who perform the required vehicle lighting, brake or smog check inspections and certifications, are not required to be registered or licensed by the BAR, nor meet any prerequisite education, experience, training or examination requirements.

Since 1984, the BAR also has had the responsibility of administering the state's program to reduce emissions from motor vehicles, called the Smog Check Program. The Smog Check

Program was enacted in 1982 by SB 33 (Presley, Chapter 892) in response to 1977 amendments to the federal Clean Air Act which required areas of the country that did not attain specified ambient air quality standards by 1982 to implement Inspection and Maintenance (I/M) programs to reduce emissions from operating cars and small trucks. That program provides for the licensing of smog check stations and smog check technicians who are required to meet specified standards by the BAR, and generally requires motor vehicles to be inspected on a biennial basis and to meet specified emissions standards in order to be registered to operate in the State.

There are over 26 million cars and light-duty trucks registered in California. The BAR registers approximately 41,000 ARDs, and licenses approximately 2300 Lamp and Brakes Stations, 8600 Smog Check Stations, 15,800 Smog Check Technicians, and 4700 lamp and brake adjusters.

## **CURRENT SUNSET REVIEW ISSUES**

### **BUREAU ADMINISTRATION ISSUES**

**ISSUE #1:** Should administration of California's laws regulating automotive repair and the motor vehicle emissions "Smog Check" Program continue to be administered by the Bureau, or should its programs be administered by either a different government agency or should the structure of the Bureau be changed?

**Questions for Issue #1:** *How effective has the Bureau been since its inception in accomplishing the purposes of the Automotive Repair Act (Act) and the state's Smog Check Program? How does the Bureau measure its effectiveness – what criteria does it use to measure it's performance? Since apparently the market conditions that led to the passage of the Auto Repair Act in 1971 were not "baselined" what evidence is there that the marketplace has been improved by the BAR's administration of the Act? What problems does the Bureau recognize in its current administration of the laws and does it have the necessary structure and resources to resolve them?*

**Background:** Although the BAR has not previously undergone a formal review by the Joint Legislative Sunset Review Committee, it was the subject of a similar review by the DCA that was completed in 1998 – *the Bureau of Automotive Repair Program Review Report* (Report). That review process included representatives of all automotive repair stakeholders – consumers, auto repair industry members, insurance industry members, law enforcement, the department and BAR staff. The program review activities included stakeholder meetings, two public forums, three stakeholder surveys, two consumer focus groups, written comments, market research and review of consumer protection and quality assurance programs, and an industry roundtable. That 1998 report found that the auto repair marketplace improved after the implementation of the Automotive Repair Act in 1972. It also found that the auto repair industry and consumers both expect auto service purchases to begin with a written estimate and authorization prior to the performance of service, and market oversight by the BAR. However, the report also found that consumers feel vulnerable to unethical or incompetent repair service providers, desire more protection in the marketplace, believe that the BAR has a more active role in ensuring technician competence than is actually the case, and that most consumers are not aware of the BAR and the assistance available through it when an auto repair problem occurs.

The report also found that serious problems were facing the auto repair industry including a shortage of competent and well-equipped service providers exacerbated by customer pressure for quick and inexpensive repairs and rapid automotive technological evolution. The report also found that fraudulent or unethical service providers continue to be a small, but significant, element in the auto repair profession. While most repair service providers were found to believe that the Act and the BAR were fair, the report also found that tension between the BAR and some service providers related to enforcement and mediation procedures and protocols may impede cooperative efforts to remedy the market defects voluntarily.

The 1998 report identified three fundamental market defects: Poor quality/Ineffective Repairs, Fraudulent and Unfair Business Practices, and a Cumbersome Dispute Resolution process, plus the BAR/Industry tension noted previously. In addition to identifying these market defects, the report also identified underlying causes, possible solutions, and the roles and responsibilities of the various stakeholders to implement the solutions. The BAR states in its Sunset Review Report that as a result of the reports' findings and recommendations, it has taken specific actions including the following: (1) developed an ongoing consumer education outreach program to inform them of how to shop for quality repair services and the BAR's services, (2) increased efforts to stop unethical service providers, (3) developed trade standard regulations for air conditioning diagnosis and repair, revamped its automatic transmission regulations, and recognized industry diagnostic and repair guidelines as accepted trade standards, (4) developed a tracking system for what consumers are complaining about and how well BAR's investigations are responding to consumer complaints, (5) established an Advisory Group that meets and advises the BAR on automotive repair and Smog Check issues, and (6) established an Industry Ombudsman to handle specific complaints and concerns brought forth by the industry.

Some representatives from the industry state that both the BAR has failed to implement the recommendations made in the 1998 program review report that would have promoted more collaboration with the industry in working on preventative solutions to marketplace problems. Instead, they state that the BAR has ignored findings in its own 1998 program review and findings of a 1995 report by the National Association of Attorneys General that identified marketplace defects other than fraud, and relied upon disciplinary enforcement actions as deterrence to compel compliance with the law. Those critical of the BAR state that despite over 30 years of operation, a growth in size from 20 to over 600 hundred employees, and a budget increase from the initial \$32.5 million to 115 million, the BAR has not addressed market defects that contribute to consumer complaint. They identify those defects as: a severe and growing shortage of qualified mechanics, a registration system that does not screen out "bad apples," inadequate training of both industry and BAR personnel, and lack of partnerships with the industry on consumer protection initiatives.

The marketplace defects and causes that were found in the 1998 and other reports, as well as the BAR/Industry tension noted in the BAR's 1998 program review still appear to exist today – leading to the question of how well is California's current regulatory structure for oversight of the auto repair industry working. It should be noted that despite criticism of the BAR, the 1998 program review report found that more than half (56%) of the ARDs who were surveyed said they believed the BAR was fair.

## **ISSUE #2: Does the Bureau and its current structure provide for meaningful input from the public and from the regulated industry?**

**Questions for Issue #2:** *How does the BAR obtain meaningful input regarding its administration of the automotive repair and Smog Check laws? How long has the BAR Advisory Group been in existence? How and why was it created? What jurisdiction or issues does it deal with? Who are the members and how are they selected? Are these meetings open to the public? How are these meetings publicized? How often does the Group meet, and who sets what items will be on the meeting agenda? Are major or significant policy decisions – for instance, the need for or the proposal of regulations - vetted with the Group for feedback? At one time the BAR had a statutorily mandated advisory board. Given the potential for changes in to management and policy from one Administration to the next, and given the past lapse in having a formal method for the public and industry to provide input regarding the Bureau's administration of the automotive repair laws, would it be beneficial and add some stability if the Group and its functions were mandated by statute – such as the Inspection and Maintenance Committee is for Smog Check? Would the same be true for the Industry Ombudsman recently created by the Bureau?*

**Background:** The BAR is administered by a Bureau Chief who is appointed by the Governor and confirmed by the State Senate. The Bureau Chief serves at the pleasure of the Governor and under the direction and supervision of the Director of the DCA. While the BAR has a statutorily mandated Inspection and Maintenance Review Committee (IMRC), with 13 members appointed by the Governor and the Legislature to advise on matters related to the performance of the state's Smog Check program, the statutes that provided for a similar automotive repair advisory board to the Bureau were repealed in 1992 – ending that board's existence. In 2001, to increase the level of communication between the BAR, the automotive repair industry, consumers and DCA, a BAR Advisory Group was established. The group is balanced to represent the public and industry with approximately 20 individuals selected by the BAR and the DCA participating in the Group's meetings. Just this past October, the BAR established an Industry Ombudsman to handle specific complaints and concerns brought forth by the industry.

There are several other bureaus in the DCA that regulate a variety of occupations including funeral directors, cemeteries, electronic and appliance repair dealers, private patrol operators and security guards, private investigators, alarm companies, hearing aid dispensers, etc. In contrast to the "bureau" structure of regulating an occupation, the department also houses over 20 licensing "boards" which are made up of members from the regulated occupation or profession and the public who are appointed by the Governor and the Legislature and generally serve for a four year term. One argument that is made in favor of the licensing board structure is that its membership provides more meaningful involvement of the public because its meetings at which it conducts its business are required to be open to the public. Another argument made in favor is that its decision making is improved by having the expertise of licensee members involved in making those decisions. And in disciplinary cases, instead of just an individual Bureau Chief making the final decision on a proposed action or penalty, in the case of a licensing board decisions on whether or not to adopt a proposed disciplinary system must be agreed to by a majority of the board's members – including those who are licensees familiar with the nature and circumstances of the work of the occupation or profession. There are arguments against the board structure for licensing – principle among them is that having licensee members on them is like having the "fox guarding the hen house."

## **BUDGETARY ISSUES**

**ISSUE #3:** Due to fiscal concerns and the current state budget shortage, there has been a freeze on hiring state employees, the Vehicle Retirement option of the Consumer Assistance Program was suspended, \$114 million was borrowed indefinitely from the Bureau's Vehicle Inspection and Repair Fund, and the Department of Consumer Affairs Consumer Information Center (CIC) had been severely reduced or eliminated.

**Questions for Issue #3:** *Were there sufficient revenues in the Bureau's High Polluter Repair and Removal Account to sustain the Vehicle Retirement program, and if so, why was it suspended. Are there specific plans via State Budget appropriation to restart the program and if so, when is the program planned to restart? What has been the impact of the state hiring freeze on the Bureau's staffing (e.g., how many positions have been eliminated and what classifications were involved?) What impact has the transfer of \$114 million to the General Fund had on the Bureau's operations? Will the loss of the Department's CIC operation affect the Bureau's operations and if so, how?*

**Background:** The BAR is a special fund agency which is funded from the sale of Smog Check certificates, the annual smog abatement fee paid by owners of newer vehicles which are temporarily exempt from the biennial smog inspection, and to a lesser extent, by licensing fees, fines and penalties. The BAR revenues are deposited into a statutorily created Vehicle Inspection and Repair Fund (VIRF) which also has within it a separate High Polluter Repair and Removal Account (HPPRA). In FY 2002/03 the VIRF received revenues of approximately \$125 million, and for the current FY 2003/04 the BAR is projecting revenues of \$116 million due to some reduction in the sales of smog certificates (from inspections), fines and penalties, and interest. The HPPRA receives from \$22 to \$23 million annually primarily from the annual Smog Abatement Fee and revenue generated from the sales of vehicles impounded by local law enforcement agencies. The HPPRA funds the activities of the Consumer Assistance Program (CAP) that provides financial assistance to consumers for the repair of voluntary retirement of a vehicle that fails a biennial Smog Check inspection.

The HPPRA reserves decreased dramatically from 24.3 months or \$94 million at the end of FY 2000/01 to only 1 month or \$2.6 million at the end of FY 2001/02. Due to the suspension of the vehicle retirement portion of the CAP which saved approximately \$4.5 million in FY2002/2003, the HPPRA reserve increased to 7.2 months or \$8.2 million by the end of FY 2002/2003, and is projected to be 6.1 months or \$10.5 by the end of FY 2003/04.

The hiring freeze in effect for the past two years has prevented many agencies from being able to fill positions that become vacant due to retirement or transfers. And, over the last two years, there has been an elimination of staff positions that have remained vacant. In addition, in FY 2002/03, \$100 million was transferred from the VIRF of the BAR to the General Fund as a loan with no specified repayment date. An additional \$14 million was similarly transferred as a loan to help balance the General Fund again this FY 2003/04. It is unclear what staffing losses the BAR has sustained in the past two years, and the effect of staffing losses and fund reductions have had on the BAR's operations or its ability to expand its programs.

Also, the vast majority of consumer complaints to the BAR regarding auto repairs are mediated by four consumer complaint mediation centers (Hayward, Riverside, Sacramento, and South El

Monte). As a result of budget reductions required for the current FY 2003/04, the DCA has had to drastically reduce the operation of its Consumer Information Center at least in Sacramento. It is unclear what impact this will have on the BAR's ability to continue to mediate consumer complaints.

**ISSUE #4:** The Bureau reports that it is expecting an increasing fund reserve from a projected 2.6 months at the end of FY 2002/03 (down from a 12-month reserve at the end of FY 2001/02) to 4.7 months at the end of FY 2006/07, and is considering a reduction in the smog abatement fee to reduce its revenues.

**Questions for Issue 4#:** *What is total annual budget for the Bureau for FY 2003/04? What percentage and dollar amount of that are expended for enforcement-related activities, consumer education and outreach, industry education and outreach, and training of bureau personnel? Given the continued problems seen by the Bureau regarding negligent and fraudulent repair, consumer ignorance of BAR's existence and the auto repair laws, and the expected increase in the reserves in the Bureau's two funds, instead of reducing the current smog abatement fee, could that revenue be utilized to enhance the Bureau's programs in ways to reduce the level of auto repair problems in the marketplace?*

**Background:** The BAR's fund condition chart shows that it had a 12-month reserve of \$103 million at the end of FY 2001/02. At the end of FY 2002/03 its reserve was reduced to 3.1 months or \$26.9 million following the transfer of \$100 million loan to the General Fund. In FY 2003/04, an additional \$14 million loan was transferred to the General Fund. The BAR is projecting a 2.6 month reserve of \$23 million by the end of FY 2003/04 and a 3.3 month reserve by the end of FY 2004/05, and states in its report that it is considering a possible reduction in the Smog Check certification fee to maintain a smaller reserve.

### **LICENSURE ISSUE**

**ISSUE #5:** Previous studies and current experience seem to indicate that there is a lack of knowledge of the requirements of the Automotive Repair Act by ARDs, a shortage of competent and well equipped service providers, and a shortage of qualified repair technicians.

**Questions for Issue #5:** *How significant is the lack of knowledge, skill and training in contributing to improper repairs and violations of the Automotive Repair Act? Has the situation improved over the past five years? What actions can be taken to improve the situation and who should take those actions? Should California require minimum training and educational requirements for ARDs and mechanics? If doing so would significantly improve the quality of automotive repairs and reduce violations of the law, how should those minimum standards be required? Would doing so necessitate state licensing of only ARDs and technicians who meet those standards, or could it be done by different means? Should at least passage of an examination on the requirements of the automotive repair laws be required to become an ARD or mechanic? Would adoption of those standards significantly reduce the number of mechanics*

*who would be able to perform automotive repairs in the future, perhaps exacerbating a shortage or putting smaller repair shops out of business? What prerequisite standards are used by Michigan and Hawaii for licensing their ARDs and technicians, and what effect have those requirements had on the automotive repair marketplace?*

**Background:** There are no prerequisite educational, experience, training or examination requirements to become an ARD with the exception of ARDs who perform specified inspections of vehicular lighting and brake systems required by the Vehicle Code, and those who perform vehicle emission inspections and repairs. ARDs who provide those particular services are required to employ BAR-licensed technicians and to pass an initial station inspection by the BAR that verifies the presence and operation of specified equipment. Automotive repair technicians (“mechanics”), except for those who perform the required vehicle lighting, brake or smog check inspections and certifications, are not registered or licensed by the BAR, nor must they meet any prerequisite education, experience, training or examination requirements to perform auto diagnosis and repairs. Smog technicians are required to be licensed by the BAR. There are two levels of licensure for smog technicians – Basic Area Technician and Advanced Emission Specialist Technician. An applicant for these licenses must meet specified requirements for education or experience, be certified as having completed courses in specified automotive systems, and have passed an examination.

There are private organizations such as Automotive Service Excellence (ASE) who provide courses for mechanics and who certify them in specific areas of automotive repair. According to the 1998 BAR program review report, only two (Michigan and Hawaii) of the seven states that require registration of auto repair facilities also require proof of employment of qualified technicians. And those were the only two states that require specific qualifications in order for a technician to become certified. Requirements for technicians were part of the initial enactment of Michigan’s auto repair registration law.

## **ENFORCEMENT ISSUES**

**ISSUE #6:** The Bureau has stated in the past that 39% of all automotive repairs involve fraud and the two-year Auto Body Repair Inspection Pilot Program recently completed by the Bureau found that 42% of the vehicles that were inspected had parts or labor listed on the invoice that were not actually supplied or performed.

**Questions for Issue #6:** *Is the auto repair fraud or incompetence problem different as between automotive mechanical repairs versus auto body repairs? If there is a difference, what is the reason for that difference? What is the bureau’s definition of auto repair fraud? What elements or factors are present in order for the Bureau to allege there has been fraud? Is there a requirement that there be an “intent” to defraud a consumer? If something is done improperly – such as invoicing and charging for a part that has not actually been installed on a vehicle during a repair – how does the Bureau determine whether that situation resulted from negligence or some form of unintentional error versus an act to defraud a consumer? Does the Bureau distinguish between those different causations when it or the Attorney General decides what disciplinary charges it will make in an accusation? Does the Bureau believe that there is ambiguity or subjectivity in what behavior constitutes a fraudulent act – and if not, why not? Explain the Bureau’s position regarding provisions that were contained in legislation that was introduced earlier this year that would have required the Bureau to formally adopt regulations*

*to categorize violations of the Automotive Repair Act and related penalties, and also to define the term "fraud."*

**Background:** According to the BAR, the reference on its Web site that stated "39% of all repairs involve fraud" was based on findings contained in the Senate Insurance Committee's "Fraud on Wheels" report (February 2000). That report's figure was based on the results of three studies conducted in the 1990's, two of which were conducted by the BAR and the third was conducted by an insurance company.

SB 1988 (Speier), enacted in 2000, mandated that the BAR conduct a two-year pilot study of auto body collision repairs by inspecting vehicles from around California. The purpose of the Auto Body Repair Inspection Program was to identify auto body repair work that was not done "according to specifications in the final invoice." To qualify for an inspection under the program, a vehicle must have had at least \$2500 worth of collision repairs performed within the preceding 120 days of the vehicle owner applying for inspection under the program. Owners of vehicles would contact the BAR to request that their vehicle be inspected. Of the 1315 qualifying vehicles, 551 or 43% had parts or labor listed on the final invoice that were not actually supplied or performed. The average dollar amount per vehicle of the overbilling was \$811.93. As a result, 47 administrative actions were filed by the Attorney General on behalf of the BAR, and 46 referrals were made by the BAR to local district attorneys for possible criminal or civil action. Under the Automotive Repair Act, violations are misdemeanors.

Under provisions of the Automotive Repair Act, Business and Professions Code Section 9884.7 "The director [of the Department of Consumer Affairs], where the automotive repair dealer cannot show there was a bona fide error, may refuse to validate, or may invalidate temporarily or permanently, the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer, or any automotive technician, employee, partner, officer, or member of the automotive repair dealer. (1) Making or authorizing in any manner...any state written or oral which is untrue or misleading... (4) Any conduct which constitutes fraud." The BAR has produced a booklet for licensees called "Write it Right" that details what the law's requirements are regarding what information must be provided the consumer on an estimate and repair invoice and explains what procedures the law requires ARDs to comply with in dealing with their customers.

The California Autobody Association (CAA) which has approximately 1000 members conducted a survey of its membership in October of 2002. CAA's survey asked the question: "Do you support the B.A.R.'s current anti-fraud enforcement efforts?" The results were Yes - 75%, No - 25%. CAA has recommended a number of things it thinks will improve the state's regulation of the auto repair industry. They include: creating auto body repair standards; increasing penalties for auto body fraud; requiring technicians, estimators and insurance appraisers to be properly trained; prohibiting insurers from dictating a method of repair or having an ownership interest in auto body shops; and increase coordination between the Department of Insurance and the BAR.

There has been criticism from a number of representatives of the automotive repair industry regarding what circumstances the BAR will consider to be a violation of the Act, especially what actions the BAR considers to be "fraud" rather than some inadvertent error, honest mistake, or plain negligence on the part of an ARD or the mechanics who perform the repairs for the ARD. These representatives disagree with a number of circumstances where the BAR will consider



some error to be “fraud” rather than some unintentional act or the result of a disagreement between the BAR and the ARD over what are the applicable trade standards for a particular repair. Further, they argue that in many situations, the degree of the error or the dollar amount involved is very minor compared to the total cost of the repairs. They believe that calling such things fraud, which carries extremely serious consequences not only in a disciplinary action, but also to the general reputation of the ARD, is excessive.

A common theme running through the criticisms of the BAR’s enforcement actions is that the severity of the disciplinary charge (e.g., fraud vs. simple error) and especially the severity of the proposed penalty is completely out of balance with the severity of the alleged offense. Further, those who criticize the BAR’s enforcement actions argue that they have no viable recourse to dispute the BAR’s accusations – short of an expensive disciplinary administrative hearing and perhaps an expensive appeal to the courts thereafter. It is also alleged that registrants and licensees are coerced into accepting any proposed stipulated agreement in a disciplinary matter not only because of the expense of asserting any defense, but from fear that any resistance to the BAR will result in some form of future retaliation (e.g., sort of a “black listing” or a “we’ll get you.”) An with the degree of ambiguity and subjectivity alleged to be present in the provisions of what constitutes a violation of the Act, and with the complexity of the automotive repair business, it is always possible to find some error from inspection of any repair shop’s records.

Disciplinary actions brought by the BAR against a registrant or licensee are required to be conducted in accordance with the provisions of the California Administrative Procedures Act which is generally applicable to disciplinary actions by all state occupational licensing boards and bureaus in the DCA.

**ISSUE #7: Non-disciplinary “Notices of Violation” (NOVs) issued by Bureau field representatives and disclosed on the Bureau’s Web site as “confirmed violations” were used as the basis for predatory unfair business practice (Business & Professions Code Section 17200) lawsuits against those facilities.**

**Questions for Issue #7:** *Why were NOVs, which were intended to be non-disciplinary in nature characterized as “confirmed violations?” When and how did the Bureau first become aware that its NOV Web site disclosures were being used to bring B&P 17200 lawsuits against its registrants? What actions were taken by the Bureau in response to this information, and what was the timing for those actions? What information is currently disclosed about a registrant or licensee on the Bureau’s Web site and what is the Bureau planning to do to change the NOV process and the purposes it was supposed to serve?*

**Background:** As a result of inspections of an ARD, if the BAR’s field representative believed that he or she had found some minor error in the manner in which the ARD conducted business, the field representative would issue the ARD a written Notice of Violation or NOV. The NOV was not intended to be a form of discipline but rather a method whereby the BAR could point out to the ARD where the BAR saw problems that were minor violations that needed to be corrected but that did not warrant any formal disciplinary action. These NOVs were posted on the BAR’s website, and characterized as confirmed violations, though there was never any formal disciplinary action and therefore no opportunity for the ARD to contest the finding of the field representative. In the spring of 2002 a law firm initiated private attorney general actions pursuant to provisions of the Business and Professions Code unfair competition/unfair business practices law (B&PC 17200.) These actions were based on the existence of the NOVs that had

been placed on 100 ARDs and listed on the BAR's Web site. These lawsuits were part of a larger pattern whereby that law firm sued a much broader number of small businesses in other occupations, based on similar violations or alleged violations of the state's licensing laws where administrative discipline may have already resolved the matter.

Representatives of the auto repair industry raised concerns with the BAR about these lawsuits and alleged that they were the result of the use of misleading data from the BAR Web page as the basis for the cause of action. The BAR did not remove the disclosure of NOV's until December of 2002, and then stopped the procedure of issuing written NOV's in January 2003. Some industry representatives argue that the BAR's unwillingness to take the concerns of the industry seriously and work with it to resolve the problem led to unnecessary delay that led to even more 17200 lawsuits being filed in the Fall of 2002. These representatives state that it was only after public outcry and a lot of negative publicity over these abusive and predatory lawsuits that the BAR finally took corrective action. The NOV situation is argued to be an example of how the BAR operates in a closed fashion, without considering input from the industry in its decision-making process.

The BAR Advisory Group has been meeting with the BAR management staff to develop a reasonable alternative to the former NOV process whereby BAR could educate ARDs about perceived problems resulting from BAR inspections and thereby obtain corrective action and compliance with the law.

**ISSUE #8:** The Bureau has adopted by formal regulation some industry trade standards for repairs in certain areas of automotive repair, but not in other areas. It is unclear and a subject of some debate between some of the regulated industry and the Bureau what trade standards the Bureau relies upon beyond those it has adopted in regulation.

**Questions for Issue #8:** *What industry trade standards does the Bureau use? If a person wished to see them where can they be found? Why are some trade standards adopted by the Bureau through formal regulation but others are not. Should additional trade standards be adopted by regulation, and would this enable those working in the industry to more readily refer and comply with them? Is there a difference in the way the Bureau uses or relies upon industry trade standards that are adopted by regulation and those that are not? Can there be ambiguity in what a particular standard means in certain repair situations, and if so, how is that ambiguity resolved? How can those who are regulated know how what standards the Bureau believes are applicable to particular repair work and how those standards are interpreted if not clear on their face?*

**Background:** The BAR has adopted regulations to establish accepted trade standards for good quality performance of certain types of automotive repair. Specifically, trade standards have been established by BAR regulation in six areas: air conditioning diagnosis and repair, automatic transmissions, lamp and brake certification, ball joints, and the installation of the ignition interlock device. BAR's statute makes reference to "accepted trade standards" by providing that any willful departure from or disregard of accepted trade standards for auto repair is cause for disciplining an ARD. Accepted trade standards for auto repair are established through their widespread use application by the industry. They are supported through procedures developed by vehicle manufacturers and manufacturers of replacement parts. They are published through

industry trade publications and repair manuals used by auto repair shops – such as Mitchell’s and AllData.

In 1992, several national auto repair chains banded together in a coalition called the Motorists Assurance Project (MAP) to begin development of a series of repair guidelines to serve both as a uniform protocol for the industry and as a way for consumers to determine the viability of any repairs they purchase. MAP guidelines, as well as standards published by others have not been adopted by the BAR through formal regulations. The BAR however, states that it recognizes such accepted industry standards for repair work. It is unclear exactly how that recognition of non-regulation accepted trade standards are actually used by the BAR when evaluating the work performed by a shop.

**ISSUE #9:** It is unclear what the expertise and training is for Bureau’s field representatives and how the Bureau ensures that its staff, who apply and interpret the auto repair laws and applicable trade standards, are sufficiently competent to do so.

**Questions for Issue#9:** *What are the minimum requirements, in particular knowledge or expertise in automotive operation and repair, for a person to be a Bureau field representatives? Are the personnel involved in enforcement activity kept up-to-date in their knowledge of current automotive repair procedures and techniques and accepted industry trade standards? How does the Bureau determine that they are, and assure that they remain so? Whose expertise does the Bureau rely upon in its disciplinary cases when the quality or propriety of a repair is alleged to be improper or fraudulent?*

**Background:** The BAR’s inspections and investigations of ARDs are conducted by field representatives on its staff. The BAR indicates that its field staff are have expertise in the current proper auto repair methods and procedures so that they are capable of determining whether repair work on a customer’s vehicle has been done, or done properly. The BAR states that it regularly conducts training for its field staff, and has 8 trainers on its staff for this purpose. However, some representatives from the automotive repair industry argue that BAR’s field staff are not always as knowledgeable in the most current proper repair methods as those who are actually performing the repairs. They argue that this can lead to disputes regarding whether a repair was done properly – and result in an ARD improperly being accused and disciplined for fraud or improper repairs.

**ISSUE #10:** Are the policies and standards required by the Automotive Repair Act and the Smog Check law applied consistently among the Bureaus 11 field offices and Sacramento headquarters?

**Questions for Issue #10:** *How does the Bureau ensure that its field staff are applying the laws and the trade standards it relies upon consistently or uniformly among the various areas and field offices in the state? What is the manner by which policies adopted by headquarters are communicated to the field offices? How does the Bureau’s management determine if those policies are being followed?*

**Background:** In addition to its Sacramento Headquarters office, the BAR maintains 11 field offices throughout the state. Through these statewide field offices, the BAR conducts consumer protection services related to automotive repair and Smog Check programs. The BAR's field representatives register, license, and regulate its registrants and licensees, and mediate complaints. Field representatives also inspect and conduct the investigations of ARDs in response to consumer complaints or other information that indicates that an ARD may be violating the law. Some industry representatives argue that given the limited tenure of BAR Chiefs from one Administration to the next, their lack of expertise in automotive repair, and the entrenched nature of BAR's enforcement staff, that there is a problem with effective communication of BAR's policies and procedures to its distant field offices. This is alleged to result in inconsistent application of the law or interpretation as to what are the applicable accepted trade standards for repair work from one field office to the next, and even from one field representative to another. It is argued that there is no real oversight by the Chief as to whether the conduct in the field is being done in a fair and consistent manner that reflects the policies and procedures that have been adopted.

## **CONSUMER, LICENSEE, AND EDUCATION COMMUNITY OUTREACH ISSUE**

**ISSUE #11:** Most consumers today do not appear to be aware of the Bureau's existence, their rights under the Automotive Repair Act, and continue to feel vulnerable to unethical or incompetent repair service providers.

**Questions for Issue #11:** *What actions does the Bureau take to educate consumer regarding the Bureau's existence, their rights, and how to select a repair facility that will provide them with proper auto repairs? Given the widespread ignorance by consumers of these three things, and their inability to determine on their own whether a repair was performed properly, are the Bureau's outreach efforts considered to be effective? How is this effectiveness measured? What additional actions could be taken by the Bureau or others to improve this situation? Does the Bureau have the resources to do more? Should requiring a written copy (perhaps on a repair work order, invoice, or attached thereto) of the information required by current law to be posted on a sign in the repair facility be considered? How many consumer fact sheets and brochures does the Bureau distribute each year, and where or how are they distributed?*

**Background:** According to the DCA, the number one complaint it receives is auto repair. The BAR's Sunset Review Report, indicates that 1% of its budget goes to fund the Communications and Education Division of the DCA, which coordinates consumer education efforts, responds to media inquiries, and prepares publications serving licensees. Seven percent of the BAR's budget goes to fund the Consumer Relations and Outreach Division of the DCA, which provides the BAR with complaint mediation and call-intake services. The BAR states that it makes great efforts to help educate California consumers about the services offered by the BAR, and aims its outreach efforts statewide with an emphasis on getting information to groups that are considered to be more vulnerable to auto repair abuses. The BAR also states it works closely with the media to get information out to consumers. In FY 2001/02 BAR spent \$3.2 to conduct an outreach effort ("Don't Know Much About Auto Repair?") about the various programs available to consumers.

The BAR produces a number of consumer fact sheets and brochures, which it sends along with BAR representatives throughout California to community outreach events such as informational fairs. And the BAR maintains Web sites ([www.autorepair.ca.gov](http://www.autorepair.ca.gov) or [www.smogcheck.ca.gov](http://www.smogcheck.ca.gov)) on which consumers can obtain and print copies of BAR's consumer and industry publications, check the registration or license status and disciplinary history of any Bar registrant or licensee, file a consumer complaint, obtain information regarding the Smog Check law requirements and procedures, fill out a Consumer Assistance Program request, etc.

Despite these and other efforts, the BAR's 1998 program review report indicates that most consumers are not aware of the assistance available to them through the BAR or other entities when an auto repair problem arises. And that report also indicated that consumers still feel vulnerable to unethical or incompetent repair service providers and want more protection.